IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 678 of 1984

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PUNJABI INDRAJIT BRIJMAL

Versus

JAISWAL C MANEKLAL

Appearance:

MR NS DESAI for Petitioner

PARTY-IN-PERSON for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 01/12/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the said Act) at the instance of the original tenant-defendant who was sued by the respondent-plaintiff landlord for a decree of eviction under the provisions of the Bombay Rent Act.

2. The plaintiff-landlord had sued the tenant for a decree of eviction under the said Act on the ground that

the defendant-tenant was in arrears of rent for more than six months and had neglected and omitted to pay the rent in spite of service of the statutory notice.

3. The trial court framed appropriate issues on the pleadings of the parties and after recording and appreciating the evidence on record, recorded findings of fact that the tenant was in fact in arrears of rent for more than six months on the date of the suit notice and had neglected and omitted to make payment thereof within 30 days from the receipt of the suit notice, and inasmuch as there was no bonafide dispute as to standard rent raised by the tenant at the relevant time, the case would fall under section 12(3)(a) of the said Act. Under these circumstances the trial court found that it had no option but to pass a decree for eviction.

4. The defendant-tenant thereupon preferred an appeal under section 29(1) of the said Act, which was dismissed by the lower appellate court. Hence the defendant-tenant has preferred the present revision under section 29(2) of the said Act.

5. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

6. Only a few salient features require to be noted. In order to avoid confusion in the appreciation of the facts on record, it is necessary to segregate the correspondence between the parties into two categories - one which occurred and took place prior to the suit notice and the other commencing from the issuance of the suit notice (statutory notice).

6.1 There was notice correspondence between the landlord and the tenant prior to the issuance of the suit notice, which is relevant only for one purpose. In the earlier notice (prior to the suit notice) the landlord had demanded arrears of rent then due, to which the defendant-tenant had replied and raised the contention as to standard rent. This contention raised in his reply to the earlier notice (which is not the statutory notice upon which the suit is based) cannot possibly amount to raising a bonafide dispute as to standard rent for two reasons. The first reason is that the defendant-tenant met the demand of the landlord raised in the prior notice and in fact remitted the amount then due by money orders, thus satisfying the demand. So far as the landlord's monetary claim is concerned, the chapter stands closed when the tenant meets the demand. This does not give any cause of action to the landlord, and in fact the landlord has not based his suit claim upon the earlier demand, which incidentally was met by the tenant. Thus, the contention raised by the defendant in reply to the landlord's earlier demand is of no relevance in the context of the suit notice, which comes years after the earlier demand and its satisfaction. The second reason why this contention of the defendant has no relevance is because, in the earlier notice, the landlord had made demand on the basis of the contractual rent, and despite the tenant raising a dispute as to standard rent, the tenant in fact remitted the amount by money order as per the amount demanded by the landlord. Thus, it can be inferred that in meeting with the landlord's demand on the basis of contractual rent, the tenant either gave up his dispute as to standard rent, or that this dispute was not a bonafide dispute.

6.2 In the context of the present suit it must be noted that the statutory notice is at Exh.36 dated 4th August 1977. This statutory notice upon which the suit is based claims arrears of rent from 5th September 1976 to 4th August 1977. This suit notice Exh.36 was refused by the tenant and therefore returned to the landlord. The returned envelope bearing the endorsement of refusal on the part of the tenant dated 5th August 1977 is at Exh.38.

6.3 There cannot be any controversy that once the tenant refuses to accept the registered cover, which discloses the name of the sender as being the landlord, the tenant is then deemed to have notice of the contents. This position is well established by a decision of a Full Bench of this Court in the case of Adambhai, reported at

15 GLR 655, further supported by the presumption that the Court is enabled to draw under section 114 of the Evidence Act.

7. In the context of the statutory notice it requires to be noted that the defendant-tenant did not reply to the same at all, nor did the tenant raise any dispute as to standard rent. As aforesaid, the dispute raised by the tenant in the earlier correspondence long prior to the suit would not be a bonafide dispute, or at best would be a dispute which the tenant had given up, by meeting with the demand of the landlord and sending money orders for arrears of rent then due on the basis of the contractual rent. So far as the suit is concerned, no such dispute has been raised either in reply to the suit notice or even by filing an application under section 11 of the Act within 30 days of receipt of the suit notice.

8. Thus, the clear position in law is that under such circumstances section 12(3)(a) of the Act comes into operation and if it is found that the tenant has not met the demand of the landlord in respect of arrears of rent of six months or more, the court has no option but to pass a decree for eviction. It is precisely on these facts that the trial court has passed the decree of eviction confirmed by the lower appellate court.

9. It requires to be noted that the dispute as to standard rent raised only in the written statement would not take the case out of the purview of section 12(3)(a) of the said Act. This is well settled position in law and is beyond dispute, in view of the decision reported in AIR 1976 SC page 2005 and Full Bench decision of this court reported in AIR 1977 Gujarat page 15.

10. As regards the determination of standard rent in the context of the dispute raised in the written statement, both the lower courts have found that the tenant has led not even the slightest shade of evidence, even to indicate, that the contractual rent is not reasonable, or that the standard rent should be determined at any smaller figure.

11. In the premises aforesaid, I find that the findings of fact recorded by the two courts below, the appreciation of the evidence on record and the conclusions drawn therefrom are eminently sustainable and that there is absolutely no justification for interference by way of the present revision.

12. This revision is, therefore, without any

substance and is accordingly dismissed. Rule is discharged with costs. Interim relief stands vacated.

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